

[1]

Sir John Lambert, *Bart.* - - - *Appellant.*

Sir Daniel O'Carrol, - - - *Respondent.*

The Appellant's C A S E.

April 1720.

IN April 1720. the Respondent and his Brothers, *John* and *Remy Carrol*, of *Paris*, prevailed on the late Sir *John Lambert*, deceased (the Appellant's Father) to buy 1500*l.* *South-Sea* Stock for their Account, which he did, and advanced the Money for them, whereby, and by selling the said Stock, they got 8000*l.*

About the 3d of *June* 1720. the Respondent bought 500*l.* in the *First* Money Subscription to the *South-Sea* Company, for 3032*l.* 11*s.* 6*d.*; and on the 6th of *June* 1720, an Account was settled between the late Sir *John* and the Respondent of their Dealings to that Time, and Sir *John* paid the Respondent the Ballance of the said Account.

There were afterwards several Transactions between the late Sir *John* and the Respondent; and in the Month of *June* or *July* 1720. the Respondent bought two Subscriptions for 1000*l.* each in the *Third* Money Subscription to the *South-Sea* Company, of *David Godin*, of *London*, Merchant, wherein the late Sir *John* was one half concerned with *Godin*, but the Appellant was no ways interested therein, and the Respondent and the said *David Godin* entred into two Contracts relating to the said Two third Subscriptions, and agreed that the Receipt for the said 500*l.* *First* Subscription, belonging to the said Respondent, should remain a Deposite in the Hands of the late Sir *John Lambert*, as a Security for the Respondent's Performance of the said Contracts.

On the 5th of *October* 1720. another Account was stated and settled between the late Sir *John* and the Respondent, and there being a Ballance of 709*l.* 5*s.* 1*d.* then due to the Respondent, the late Sir *John* paid him the same, for which he signed a Receipt written with his own Hand, and also signed the Account.

1st Bill in
Chancery by
the Respondt.

May 16. 1721. The Respondent brought his Bill in *Chancery* against the late Sir *John Lambert* and one *Fergus Farrell*, setting forth, that he the Respondent, had desired the late Sir *John*, out of the Respondent's Money in his Hands, to pay to the said *Fergus Farrell* 1500*l.* to discharge certain Bills of Exchange which had been drawn by one *Crean*, the Respondent's Uncle, upon the said *Fergus Farrell*, and accepted by him, and set forth, that the said 1500*l.* was charged in the said Account of the 5th of *October*, as paid to the said *Fergus Farrell*; but that the said late Sir *John* had not paid the same, but instead thereof, had delivered to the said *Fergus Farrell*, Bills of Exchange for 1500*l.* which had been drawn by one *Elcoma* upon the said *Fergus Farrell*, and accepted by him, payable to the said late Sir *John*, and the End of the said Bill was only to have a Satisfaction from the late Sir *John Lambert* for the said 1500*l.* and the Appellant was not a Party to that Bill.

2d Bill in
Chancery by
the Respondt.

In *October* 1721. — The Respondent filed another Bill against the late Sir *John* and the said *David Godin*, and the Appellant (who was Partner with his said Father as a Merchant (*viz.* the Appellant One Third Part, and his said Father Two Third Parts) and by the said last mentioned Bill, the said Respondent set forth, That after the said 500*l.* *First* Subscription, was deposited in the Hands of the late Sir *John*, he the Respondent desired him to sell the same, and that he refused so to do, whereby he the Respondent was much prejudiced, and that the said Account of the 6th of *June* was fraudulent, and that there were several Errors in the Account of the 5th of *October*, and therefore prayed a Satisfaction for the late Sir *John's* not selling the said 500*l.* Subscription, and that the said Accounts might be set aside, and the Defendants might come to account with him.

To

Answer of the
Appellant and
his Father.

To which last mentioned Bill, the late Sir *John* and the Appellant put in their Answer, and the late Sir *John* denied that the Respondent applied to him to sell the said 500*l.* Subscription; but says, if he had so applied, he could not have sold it without the Consent of Godin, and that the said Subscription was never sold or altered, but was delivered up by him to the Trustees of the *South-Sea* Company, when he delivered up his Estate and Effects to them, pursuant to an Act of Parliament, and insisted on the said stated Accounts of the 6th of *June* and 5th of *October* 1720. and answered the particular Errors assigned therein, and Issue was joined thereon, and Witnesses examined.

Order on hear-
ing the two
Causes.

On the 3d of *December* 1722.— Both these Causes came on to be heard together before his Honour the Master of the Rolls (though they were in their Nature distinct Causes between different Parties, and set down to be heard on different Days) and an Account was decreed to be taken by Mr. *Lightboun*, one of the Masters of the said Court, of all the Dealings and Transactions between the Respondent and the late Sir *John*, and the Appellant and Godin, and that the Account of the 5th of *October* 1720. should stand as to all the Items therein contained, with Liberty for the Respondent to falsify or surcharge the same; and as to the Sum of 1500*l.* the Master was to examine whether the same was applied to discharge the Bills drawn by *Crean* and Company, or the Bills drawn by *Elcoma*, or any, and which of them, and state how he found the same.

The late Sir *John Lambert* died in *January* 1722-3, leaving his Widow the Lady *Lambert* sole Executrix, and the Respondent by two several Orders revived both the Causes against her.

There were divers Proceedings before the Master under this Decree, and the Respondent having entered his Claim, for the Matters in Question upon the Estate of the late Sir *John*, before the Trustees of the Estates of the late Directors, upon a Motion made in the Court of *Chancery* on the 18th of *July* 1723, it was ordered, (pursuant to a Clause in an Act of Parliament in the 9th Year of his late Majesty) That all Proceedings in both the said Causes, and the said Decree, so far as related to the Lady *Lambert*, Executrix of her said late Husband, should be dismissed and vacated.

It was apprehended, that after this Order no Proceedings could be had against the Appellant, at least on the first Bill, for that he was not a Party to it, and the whole Transaction related singly to his Father; and the Subject of the second Bill could only relate to his Father, the whole Transaction being with him, relating to Contracts on *South-Sea* Subscriptions, and were not in Partnership with the Appellant, but solely on his own private Account, and he was to have the sole Benefit thereof; and what was alledged relating to the not Selling the 500*l.* Subscription, was only alledged against the Appellant's Father, and the Appellant was not concerned therein, either as to Profit or Loss, and no Application whatsoever was made or pretended to be made to him to sell the same.

But notwithstanding the Matters aforesaid, Proceedings were still carried on before the Master, although the Trustees for the *South-Sea* Company, who were concerned Two Thirds, if not the Whole, in the Event of the Cause, were not Parties.

Master's
Report.

March 23, 1723.— The Master made his Report in both the Causes, and thereby (*inter alia*) stated the Matter relating to the said Order of the 18th of *July* then last, with his Opinion thereon; and also stated to the Court the Proceedings and Evidence relating to the said 1500*l.*; and likewise stated several Facts relating to the said 500*l.* First Subscription, and the depositing the same on the said Contracts, specially to the Court; but whether the late Sir *John Lambert* ought to have sold the same, though the Contracts were not performed, and whether the Appellant, to whom no Application of that kind appeared to have been made, but was then Partner with his Father, ought to answer the Value thereof, or the Price for which the same would have sold at any the Times the Respondent applied for the Sale thereof, or ought only to account for and deliver what the *South-Sea* Company have allowed for the same, the said Master submitted to the Judgment of the Court.

Order on hearing Exceptions to the Master's Report.

To this Report the Appellant took several Exceptions, and the Respondent likewise took some Exceptions; the Matter of both which Exceptions, and likewise the Special Matter of the Master's Report, and as to Costs, came on to be heard before the late Lord Chancellor on the 20th of July 1724, when his Lordship was pleased to order (*inter alia*) That the Master should *review his Report*, and allow the said 1500*l.* to the Respondent. — And the Appellant's 6th Exception being, That the Master had stated specially the several Matters relating to the 500*l.* Subscription, and the not disposing thereof, as in the said Report is mentioned, the Appellant insisted, that the same ought not in any manner to affect him, and ought not to have been brought into the said Report, in regard the same *only related to the Executorship of his Father*, against whom the said Decree and all Proceedings were dismissed and vacated: His Lordship was pleased to over-rule the said 6th Exception. — And the special Matter of the said Report, relating to the said 500*l.* Subscription, being opened, his Lordship was pleased to declare, That the Appellant ought to answer for the said 500*l.* First Subscription to the Respondent, *according to the current Price of the said Subscriptions when the Appellant's Father was desired to sell the same, as ascertained by the Master*, which was at 615*l.* *per Cent.* Advance; — But the Appellant to stand in the Place of the Respondent, to receive back from the Trustees of the *South-Sea Company* so far as the Estate of his Father was thereby made liable to the Respondent; — But the Appellant to indemnify the Respondent, and to pay him his Costs of the Suit, to be taxed by the Master.

The Respondent served the Appellant with a Writ of Execution of this Order, and afterwards arrested him on an Attachment for 3525*l.* being the Value of the said Subscription at 615*l.* *per Cent.* Advance, which the Appellant was forced to pay, and also 214*l.* for Costs to the Respondent.

The Appellant has appealed against so much of the said Proceedings and of the said Order of the 20th of July 1724, as orders the Appellant to pay any thing upon Account of the said 500*l.* Subscription, or to pay the Respondent his Costs, and conceives himself aggrieved thereby, for the following, amongst other REASONS, *viz.*

For that the Appellant was no way concerned with his Father or with the Respondent in the Contract about the Third Subscription, for Security whereof the said 500*l.* First Subscription was to remain a Deposit: But the said 500*l.* Subscription was deposited in the Hands of the Appellant's Father, for securing the Respondent's Performance of the said Contract, in which the Appellant was not Partner, nor any ways concerned; and it is not pretended, that the said Subscription was in the Hands or Power of the Appellant, or that any Request was made, or Notice given to the Appellant, by or on Behalf of the Respondent, to sell the said 500*l.* Subscription, and therefore the Appellant ought not to have been decreed to pay any thing for the said Subscription, or to have paid the Respondent's Costs: And if the Appellant's Father himself, or his Representatives, had been the Defendants against whom the Decree had been made, there was no reason for charging them with the Payment of the said Money for the said 500*l.* First Subscription; but however that might have been, there is not the least Evidence or Foundation to charge the Appellant therewith.

*Wherefore, and for other Reasons, the Appellant humbly hopes, the said Proceedings and Order of the 20th of July 1724, so far as they relate to the said First Subscription, shall be Reversed; and that the Respondent will be ordered to pay back to the Appellant the said 3525*l.* and 214*l.* and his Costs in the said Suits.*

THO. LUTWYCHE.

J. WILLES.

Sir John Lambert, Bart. Appellant.

Sir Daniel O'Carrol, - Respondent.

The Appellant's Case.

*To be Heard at the Bar of the House of
Lords, on Monday the 15th Day
of February, 1730-31.*